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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,860	07/16/2003	Andrew R. Weisenberger	062373	1759
38834 7590 06/04/2007 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036			EXAMINER FRANK, RODNEY T	
			ART UNIT 2856	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

### Application No.

10/621,860

### Applicant(s)

WEISENBERGER ET AL.

### Examiner

Rodney T. Frank

### Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-11,13-18,27-30,35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/13/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-11, 13-18, 27, 28, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Patent Publication number US 2004/0190586; hereinafter referred to as Lee). Lee discloses that this invention provides an apparatus for nondestructive residential inspection and various methods for using a thermal imaging apparatus coupled to inspect exterior residential components, interior residential components, a pitched roof and basement of a residential building and the electrical system of a residential building (Please see the abstract).

In regard to claims 1, and 11, 35, and 36 Lee discloses a method and system for certifying at least a portion of structural components of an interior of a structure relative to moisture content, comprising the steps of: measuring moisture content levels within structural components of said portion of the interior of the structure; and providing a report of moisture content level measurements. Paragraphs [066] and [0067] describe the specifics of the home inspection and what it measures. Specifically, paragraph [0077] specifically discloses that there are measurements made in elements such as walls, ceilings, windows, etc.

Art Unit: 2856

Upon reading the specification in order to gain a better insight as to what the “certificate” being issued meant, it was determined by the examiner that the certificate is a document or report that is given upon the completion of a moisture test to determine whether a particular structure passed or failed the test based upon given parameters (page 2 line 33 through page 4 line 3, for example). In the Lee reference, moisture content is determined for structural components of the interior of a structure (see paragraph [0066] and [0077]). Then, since the certificate is a document that gives information regarding the results for the moisture test, Lee discloses at the end of paragraph [0067] that a report can be generated summarizing all portions of the inspection. The generation of a report, though not exactly a certificate, would be deemed as an obvious equivalent to one of ordinary skill in the art as it provides a function of giving data relevant to the level of moisture content. The examiner would also like to mention that though the certificate may be a simpler reporting means than a detailed report as the one described in the Lee reference, utilizing the certificate in lieu of the report does not provide any benefit nor produce any unexpected result over the prior art.

In reference to claims 5-9, and 14-18, 27, and 28, the Lee reference is disclosed to be used with the inspection of a house, and while not exactly the same, the terminology used would be consistent with a “structure” that would meet the various descriptions in the claims, such as new construction, old construction, single family residence, etc.

Art Unit: 2856

In reference to claims 10, 13, 25, and 29-31, paragraph [0131] discloses that a known parameter of wood being able to safely store 20% moisture by weight (moisture content), thus the parameters for buildings, structure and building materials is a known parameter that would be obvious to one of ordinary skill in the art. For example, an article from the Department of Wood and Paper Science; Housing and Clothing at the University of Minnesota entitled "Testing Housing Materials for Moisture" it states that if moisture content is measured to be less than 10%, then there is no need to worry, while a reading above 20% could indicate a serious moisture problem (this can also be found on line at the following internet address: <http://www.extension.umn.edu/info-u/household/BK270.html>). Therefore, the claimed percentages are viewed as known parameters well within the preview of one of ordinary skill in the art.

3. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. as applied to claims 1, 5-11, 13-18, 27, 28, 35, and 36 above, and further in view of "Wood Moisture Content", Clemson Extension Residential Housing, HL 255. Claims 29 and 30 require a moisture content level of 18%. While not implicitly disclosed, Wood Moisture Content discloses that in a range of 16-20%, there is a concern for moisture content. Therefore, a percentage of 18% is deemed to be well within the preview of one of ordinary skill in the art.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 5-11, and 13-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Art Unit: 2856

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (571) 272-2193. The examiner can normally be reached on M-F 9-5:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2856

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RTF

May 26, 2007



HEZRON WILLIAMS  
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